

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:

Opinion requested by:
Harry H. Kahn,
Attorney representing
American Building
Maintenance Industries

No. 75-185
Nov. 3, 1976

BY THE COMMISSION: We have been asked the following questions by Harry H. Kahn, legal counsel for American Building Maintenance Industries:

(1) Must contributions made by a parent corporation be combined with those made by wholly owned subsidiaries to determine whether one or more of the corporations are "committees"?

(2) Is the conclusion the same if the parent corporation makes no contributions but contributions are made by wholly owned subsidiaries?

(3) If the parent corporation and its subsidiaries may make contributions independent of one another, may each subsidiary and the parent make contributions of up to \$4,999.99 without becoming "committees"? Government Code Section 82013(c).

CONCLUSION

(1) When contributions are made by the parent corporation and wholly owned subsidiaries, we will assume that they are a "combination of persons" which is attempting to influence the voters for or against the nomination or election of a candidate or the passage or defeat of a measure. Accordingly, the parent corporation and its subsidiaries ordinarily must file campaign statements as a major donor committee if their combined contributions total \$5,000 or more in a calendar year. We will reach a contrary conclusion only when it is clear from surrounding circumstances that the parent corporation and its subsidiaries acted completely independently of each other. In the present case, we conclude that American Building Maintenance Industries and its wholly

owned subsidiaries do act completely independently of each other in choosing the recipients of contributions and determining the timing of such contributions and that they, therefore, are not a "combination of persons."

(2) The conclusion is the same even if the parent corporation makes no contributions.

(3) If it is clear from the surrounding circumstances that the corporations make contributions completely independently of each other, each corporation may make contributions of cash, checks and other cash equivalents up to \$4,999.99 without becoming a "committee" within the meaning of Government Code Section 82013(c). However, the fact that each corporation made contributions of \$4,999.99 might indicate that the corporations were operating pursuant to a mutual understanding to avoid the reporting requirements of the Political Reform Act.

ANALYSIS

(1) American Building Maintenance Industries ("ABMI") is a California corporation that is listed on the New York Stock Exchange. ABMI, the parent corporation, is the sole shareholder of several subsidiary California corporations which are engaged in varied lines of business, including janitorial services, pest control, air conditioning, parking services, lighting and sign maintenance, elevator maintenance and cleaning supplies. Approximately 15 wholly owned subsidiaries operate primarily within California, while another ten subsidiaries engage in business primarily outside the state. ABMI files a consolidated tax return with its subsidiaries and issues a consolidated annual report to its shareholders. From time to time, one or more of the subsidiary corporations and the parent corporation may make monetary contributions to candidates and committees supporting or opposing ballot measures. In any one year, approximately one-half of the subsidiaries make campaign contributions, although the number differs from year to year.

With few exceptions, every director of a subsidiary is also a director of the parent corporation. The directors, however, do not exercise control over the operations of the subsidiaries and are never involved in decisions to make campaign contributions. Instead, the management responsibility lies with the officers of each of the different corporations, most of whom are not directors, and it is the officers of each subsidiary who make the decisions to donate campaign

contributions. Although the procedure for making contributions differs from subsidiary to subsidiary, in many cases the decision is made at the managerial level without even informing the president of the subsidiary corporation. For example, in several subsidiaries a vice president decides whether to make campaign contributions.

Decisions to make contributions are made independently of ABMI without coordination or direction by the parent corporation. ABMI has established some maximum limit on the amount of an expenditure (including campaign contributions) that a subsidiary can make without obtaining prior approval, but within that limit the subsidiary can contribute what it wishes, when it wishes and to whom it wishes. Moreover, the subsidiaries do not coordinate their political activities with each other, and the corporations do not aggregate their contributions for any other record keeping or reporting purpose.

Based on these facts, Mr. Kahn has asked whether contributions of the parent and subsidiaries should be aggregated to determine whether ABMI and any of its subsidiaries are a "committee" as defined in Government Code Section 82013(c).^{1/}

Section 82013 defines "committee" to include:

... any person or combination of persons who directly or indirectly ... makes ... contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, ... if:

...

(c) Contributions of cash, checks and other cash equivalents paid directly to candidates and committees total five thousand dollars (\$5,000) or more in a calendar year....

^{1/} All statutory references are to the Government Code unless otherwise noted.

The term "person" is defined in Section 82047 to include corporations.^{2/} Accordingly, if ABMI and its wholly owned subsidiaries are a combination of corporations they will be a committee within the meaning of the Political Reform Act if the requisite amounts of contributions are made.

We previously have considered the meaning of the term "combination of persons" in an opinion involving the majority shareholder of a closely held corporation. Opinion requested by Thomas G. Lumsdon, 2 FPFC Opinions 140 (No. 75-205, Sept. 7, 1976). In that opinion, we concluded that the term "person or combination of persons," as used in the definition of "committee," refers to:

... an alliance of persons or entities formed for the purpose of influencing the voters for or against the nomination or election of one or more candidates or the passage or defeat of one or more measures....

2 FPFC Opinions 140, 143.

In Lumsdon, we assumed that the relationship between a majority shareholder and his closely held corporation is an alliance constituting a "combination of persons" because of the control that the majority shareholder exercises over the activities of the closely held corporation. The relationship between a parent corporation and its wholly owned subsidiaries is similar to the relationship between a majority shareholder and his closely held corporation. Even if the subsidiary corporations are independently managed, the officers of the subsidiaries ultimately are responsible to the parent corporation. Furthermore, if the decisions of the officers of the subsidiaries are not responsive to the overall desires of the parent corporation, the officers can be removed by the directors. Because of these similarities, we believe that it is appropriate to apply the standard developed in Lumsdon to a parent corporation and its wholly owned subsidiaries.

^{2/} ABMI and its subsidiaries would be a "person" within the meaning of Section 82047 if they are "a group of [corporations] acting in concert." Nothing in the facts indicates that the corporations are acting in concert to make contributions. Consequently, this opinion is limited to considering whether the parent corporation and its wholly owned subsidiaries are a "combination of persons" as that phrase is used to define "committee." Section 82013.

We will assume, therefore, that when a corporation and its wholly owned subsidiaries make contributions they do so pursuant to at least an implicit agreement to accomplish a common political goal and are a "combination of persons" within the meaning of Section 82013. Consequently, the parent corporation and its subsidiaries will be a "committee," as defined in Section 82013(c), when their contributions aggregate \$5,000 or more in a calendar year. We will reach a contrary conclusion only when it is clear from the surrounding circumstances that the corporation and its subsidiaries acted completely independently of each other.

Applying this standard in the context of the instant case, Mr. Kahn has stated that ABMI and its wholly owned subsidiaries act completely independently of each other when making campaign contributions. The corporations do not coordinate their efforts or even inform each other when they make contributions, and the corporate directors do not participate in decisions to make contributions. ABMI has imposed a limit on the amount that a subsidiary can expend for certain purposes (including campaign contributions) without obtaining prior approval, but within that limit the officers of the subsidiaries decide to make contributions according to their own judgment concerning the best interests of the subsidiary.^{3/} Moreover, the officers of the subsidiary act without informing the officers or directors of ABMI, and ABMI has not involved itself in the subsidiaries' campaign activities other than to set a limit on the amount that can be contributed without obtaining prior approval. In light of these facts, we conclude that ABMI and its subsidiaries are not a "combination of persons" within the meaning of Section 82013. Thus, they are not required to aggregate their contributions to determine whether one or more of the corporations is a "committee," Section 82013.

(2) Even if the parent corporation made no campaign contributions, we would require the parent and subsidiaries to file as a single "committee" unless it is clear from the surrounding circumstances that the parent and its subsidiaries acted completely independently of each other. As stated in

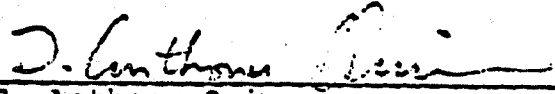
^{3/} Although counsel for ABMI was uncertain about the precise amount of the limit on expenditures that can be made without prior approval, he did indicate that it was substantially in excess of the typical contribution (generally in the \$100 to \$250 range) made by subsidiaries.

Part (1), the facts of this case indicate that ABMI and its subsidiaries have acted completely independently of each other. Therefore, we conclude that, in this case, the subsidiaries are not required to aggregate their campaign contributions to determine whether any of the subsidiaries are a "committee," pursuant to Section 82013(c).

(3) Lastly, Mr. Kahn has asked, in light of the conclusions set forth above, whether each subsidiary and the parent may make contributions of up to \$4,999.99 without becoming a "committee" under Section 82013(c). If it is clear from the surrounding circumstances that the corporations make contributions completely independently of each other, each corporation may make contributions of up to \$4,999.99 without becoming a "committee" within the meaning of Section 82013(c). However, the parent corporation and its subsidiaries may not rely on their separate corporate entities to evade the reporting obligations imposed by the Political Reform Act; and the fact that each corporation made contributions of \$4,999.99 might suggest that they were operating pursuant to a common plan to make contributions and to circumvent the Act's reporting requirements.

In conclusion, we emphasize that our opinion in this matter is limited to the particularized facts of the opinion request to which it is responsive. In most instances, a parent corporation and its wholly owned subsidiaries undoubtedly will make campaign contributions pursuant to the type of agreement or mutual understanding contemplated by our opinion in Lumsdon and, therefore, will be a combination of persons. It is only on the basis of the unique facts present in this case, which demonstrate ABMI and its subsidiaries act completely independently of each other, that we reach a contrary conclusion.

Adopted by the Commission on November 3, 1976.
Concurring: Brosnahan, Carpenter, Lapan and Quinn. Dis-
senting: Lowenstein.



T. Anthony Quinn
Commissioner